TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1931~~ 1932

No. ~~307~~ 19

THE UNITED STATES OF AMERICA, APPELLANT

vs.

SHREVEPORT GRAIN & ELEVATOR COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA

FILED MARCH 18, 1932

(36,621)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 807

THE UNITED STATES OF AMERICA, APPELLANT

vs.

SHREVEPORT GRAIN & ELEVATOR COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA

INDEX

	Original	Print
Record from D. C. U. S., Western Louisiana	1	1
Indictment	1	1
Demurrer	12	9
Motion to quash	13	9
Opinion on rehearing, Dawkins, J., Case No. 5542	14	10
Opinion, Dawkins, J	17	12
Order sustaining motion to quash and dismissing case	18	12
Petition for appeal	19	13
Bill of exception and assignment of errors	20	14
Order allowing appeal	22	15
Waiver of notice and citation	22	15
Minute entries	23	15
Præcipe for transcript of record	25	17
Clerk's certificate [omitted in printing]	26	17
Statement of points to be relied upon and designation to print entire record	27	17

1 In United States District Court for the Western District of Louisiana, Shreveport Division

October term, A. D. 1931, at Shreveport

No. 6214

UNITED STATES OF AMERICA

vs.

SHREVEPORT GRAIN & ELEVATOR COMPANY

Indictment

Filed Nov. 4, 1931

The grand jurors of the United States, within and for the Western District of Louisiana, Shreveport Division, impaneled, sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western District of Louisiana, Shreveport Division, upon their oaths, charge and present:

That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid, on the fourth day of April, in the year of our Lord, one thousand nine hundred and twenty-nine, then and there, in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 768), unlawfully ship and deliver for shipment in interstate commerce, from the city of Shreveport, in the State of Louisiana, in the United States, via the Kansas City Southern Railway Company, a corporation, a common carrier, to the city of Natchez, in the State of Mississippi, in the United States, consigned to Stein & Hicks Company, a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded as follows, to wit:

2

RED HEAD

FRESH
GROUND

MEAL

SHREVEPORT GRAIN & ELE. CO.
SHREVEPORT, LA.

FRESH GROUND NET

96 MEAL LBS.

That said article of food contained in said sacks, when shipped as aforesaid, was then and there misbranded within the meaning of

said act of Congress in that the statement, to wit, "96 lbs. net," borne on the sacks containing the article regarding the article, was false and misleading in this, that it represented that each of said sacks contained ninety-six pounds net of the article, whereas in truth and in fact, each of said sacks did not contain ninety-six pounds net of the article but did contain a less amount, to wit, not more than ninety-four pounds twelve ounces net of the article; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT II

And the said grand jurors of the United States, within and for the Western District of Louisiana, Shreveport Division, impaneled, sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western District of Louisiana, Shreveport Division, upon their oaths, further charge and present:

That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid, on the fourth day of April, in the year of our Lord, one thousand nine hundred and twenty-nine, then and there in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 7680, unlawfully ship and deliver for shipment,
3 in interstate commerce, from the city of Shreveport, in the State of Louisiana, in the United States, via the Kansas City Southern Railway Company, a corporation, a common carrier, to the city of Natchez, in the State of Mississippi, in the United States, consigned to Stein & Hicks Company, a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded as more fully described in the first count of this indictment, and which said description in said first count is, by reference, hereby incorporated in this count.

That said article of food, contained in said sacks, when shipped as aforesaid, was then and there misbranded within the meaning of said act of Congress, in that it was labeled "96 lbs. net" so as to deceive and mislead the purchaser into the belief that each of said sacks contained ninety-six pounds net of the article, whereas, in truth and in fact, each of said sacks did not contain ninety-six pounds net of the article, but did contain a less amount, to wit, not more than ninety-four pounds twelve ounces net of the article; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT III

And the said grand jurors of the United States, within and for the Western District of Louisiana, Shreveport Division, impaneled, sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western District of Louisiana, Shreveport Division, upon their oaths, further charge and present:

That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana, and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid, on the fourth day of April, in the year of our Lord, one thousand nine hundred and twenty-nine, then and there, in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 768), as amended by the act of March 3,
4 1913 (37 Statutes at Large, 732), unlawfully ship and deliver for shipment, in interstate commerce, from the city of Shreveport, in the State of Louisiana, in the United States, via the Kansas City Southern Railway Company, a corporation, a common carrier, to the city of Natchez, in the State of Mississippi, in the United States, consigned to Stein & Hicks Company, a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded as more fully described in the first count of this indictment, and which said description in said first count is, by reference, hereby incorporated in this count.

That said article of food contained in said sacks, when shipped as aforesaid, was then and there misbranded within the meaning of said act of Congress, as amended, in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT IV

And the said grand jurors of the United States, within and for the Western District of Louisiana, Shreveport Division, impaneled, sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western District of Louisiana, Shreveport Division, upon their oaths, further charge and present:

That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana, and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid, on the fifth day of April, in the year of our Lord, one thousand

nine hundred and twenty-nine, then and there, in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 768), unlawfully ship and deliver for shipment, in interstate commerce, from the city of Shreveport, in the
5 State of Louisiana, in the United States, via the Yazoo & Mississippi Valley Railroad Company, a corporation a common carrier, to the city of Vicksburg, in the State of Mississippi, in the United States, consigned to P. P. Williams & Company, a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded as follows, to wit:

RED HEAD

FRESH
GROUND

MEAL

SHREVEPORT GRAIN & ELE. CO.
SHREVEPORT, LA.

FRESH GROUND NET

24 MEAL LBS.

That said article of food contained in said sacks, when shipped as aforesaid, was then and there misbranded within the meaning of said act of Congress in that the statement, to wit, "24 lbs. net," borne on the sacks containing the article regarding the article, was false and misleading in this, that it represented that each of said sacks contained twenty-four pounds net of the article, whereas, in truth and in fact, each of said sacks did not contain twenty-four pounds net of the article but did contain a less amount, to wit, not more than twenty-three pounds net of the article; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT V

And the said grand jurors of the United States, within and for the Western District of Louisiana, Shreveport Division, impaneled, sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western District of Louisiana, Shreveport Division, upon their oaths, further charge and present:

6 That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid, on the fifth day of April, in the year of our Lord, one thousand

nine hundred and twenty-nine, then and there, in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 768), unlawfully ship and deliver for shipment, in interstate commerce, from the city of Shreveport, in the State of Louisiana, in the United States, via the Yazoo & Mississippi Valley Railroad Company, a corporation, a common carrier, to the city of Vicksburg, in the State of Mississippi, in the United States, consigned to P. P. Williams & Company, a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded as more fully described in the fourth count of this indictment, and which said description in said fourth count is, by reference, hereby incorporated in this count.

That said article of food contained in said sacks, when shipped as aforesaid, was then and there misbranded within the meaning of said act of Congress in that it was labeled "24 lbs. net," so as to deceive and mislead the purchaser into the belief that each of said sacks contained twenty-four pounds net of the article, whereas, in truth and in fact, each of said sacks did not contain twenty-four pounds net of the article but did contain a less amount, to wit, not more than twenty-three pounds net of the article; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count VI

And the said grand jurors of the United States within and for the Western District of Louisiana, Shreveport Division, impaneled, sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western
7 District of Louisiana, Shreveport division, upon their oaths, further charge and present:

That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid, on the fifth day of April, in the year of our Lord, one thousand nine hundred and twenty-nine, then and there, in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 768), as amended by the act of March 3, 1913 (37 Statutes at Large, 732), unlawfully ship and deliver for shipment, in interstate commerce, from the city of Shreveport, in the State of Louisiana, in the United States, via the Yazoo & Mississippi Valley Railroad Company, a corporation, a common carrier, to the city of Vicksburg, in the State of Mississippi, in the United States, consigned to P. P. Williams & Company a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded

as more fully described in the fourth count of this indictment, and which said description in said fourth count is, by reference, hereby incorporated in this count.

That said article of food contained in said sacks, when shipped as aforesad, was then and there misbranded within the meaning of said act of Congress as amended in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

8 COUNT VII

And the said grand jurors of the United States, within and for the Western District of Louisiana, Shreveport Division, impaneled, sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western District of Louisiana, Shreveport Division, upon their oaths, further charge and present:

That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana, and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid; on the third and fifth days of April, in the year of our Lord one thousand nine hundred and twenty-nine, then and there, in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 768), unlawfully ship and deliver for shipment, in interstate commerce, from the city of Shreveport, in the State of Louisiana, in the United States, via the Yazoo & Mississippi Valley Railroad Company, a corporation, a common carrier, to the city of Vicksburg, in the State of Mississippi, in the United States, consigned to P. P. Williams & Company, a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded as follows, to wit:

RED HEAD

FRESH
GROUND
MEAL

SHREVEPORT GRAIN & ELE. CO.
SHREVEPORT, LA.

FRESH GROUND NET
98 MEAL LBS.

That said article of food contained in said sacks, when shipped as aforesaid, was then and there misbranded within the meaning of

said act of Congress, in that the statement, to wit, "98 lbs. net," borne on the sacks containing the article regarding the article, was false and misleading in this, that it represented that each of
9 said sacks contained ninety-eight pounds net of the article, whereas, in truth and in fact, each of said sacks did not contain ninety-eight pounds net of the article, but did contain a less amount, to wit, not more than ninety-seven pounds net of the article; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT VIII

And the grand jurors of the United States, within and for the Western District of Louisiana, Shreveport Division, impaneled, sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western District of Louisiana, Shreveport Division, upon their oaths, further charge and present: That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid, on the third and fifth days of April, in the year of our Lord one thousand nine hundred and twenty-nine, then and there, in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 768), unlawfully ship and deliver for shipment, in interstate commerce, from the city of Shreveport, in the State of Louisiana, in the United States, via the Yazoo & Mississippi Valley Railroad Company, a common carrier, to the city of Vicksburg, in the State of Mississippi, in the United States, consigned to P. P. Williams & Company, a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded as more fully described in the seventh count of this indictment, and which said description in said seventh count is, by reference, hereby incorporated in this count.

That said article of food contained in said sacks, when
10 shipped as aforesaid, was then and there misbranded within the meaning of said act of Congress in that it was labeled "98 lbs. net," so as to deceive and mislead the purchaser into the belief that each of said sacks contained ninety-eight pounds net of the article, whereas, in truth and in fact, each of said sacks did not contain ninety-eight pounds net of the article but did contain a less amount, to wit, not more than ninety-seven pounds net of the article; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT IX

And the said grand jurors of the United States, within and for the Western District of Louisiana, Shreveport Division, impaneled,

sworn, and charged in said court, at the term aforesaid, to inquire for the United States within and for the Western District of Louisiana, Shreveport Division, upon their oaths, further charge and present:

That the Shreveport Grain and Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana and a citizen and resident of the city of Shreveport, in the district aforesaid, did in the district aforesaid, on the third and fifth days of April, in the year of our Lord one thousand nine hundred and twenty-nine, then and there, in violation of the act of Congress of June 30, 1906, known as the food and drugs act (34 Statutes at Large, 768), as amended by the act of March 3, 1913 (37 Statutes at Large, 732), unlawfully ship and deliver for shipment, in interstate commerce, from the city of Shreveport, in the State of Louisiana, in the United States, via the Yazoo & Mississippi Valley Railroad Company, a corporation, a common carrier, to the city of Vicksburg, in the State of Mississippi, in the United States, consigned to P. P. Williams & Company, a certain article of food, contained in a number of sacks, each sack then and there denominated as to the contents thereof and labeled, marked, and branded as more fully described in the seventh count of this indict-
11 ment, and which said description in said seventh count is, by reference, hereby incorporated in this count.

That said article of food contained in said sacks, when shipped as aforesaid, was then and there misbranded within the meaning of said act of Congress as amended in that it was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

PHILIP H. MECOM,
United States Attorney.
J. FAIR HARDIN,
Asst. U. S. Attorney.

A true bill:
FRED WILSON,
Foreman.
(File endorsement omitted.)

Marshal's return

Filed Nov. 7, 1931

Received this writ in Shreveport, La., Nov. 6, 1931, and executed on the Shreveport Grain & Elevator Co. on that date by delivering certified copy of this writ to J. H. Blalock, vice president of Shreveport Grain & Elevator Co., in person, in the office maintained by said

company, in Shreveport, La., he being highest officer of said company present in office at time of service.

GEORGE W. MONTGOMERY,
U. S. Marshal.
By A. COLLINS, *Deputy.*

(File endorsement omitted.)

12 In United States District Court

(Title omitted.)

Demurrer

Filed Nov. 9, 1931

Now comes the defendant and demurs to the information or bill of indictment herein, and for grounds of demurrer assigns the following:

That said information or bill of indictment charges no offense against the laws of the United States.

PUGH, GRIMMET & BOATNER,
FRED SIMON,
Attorneys for Shreveport Grain & Elevator Company,
A Corporation, Defendant.

(File endorsement omitted.)

13 In United States District Court

(Title omitted.)

Motion to quash

Filed Nov. 9, 1931

Now into court, through undersigned counsel, comes Shreveport Grain & Elevator Company, and moves this court that the bill of information or bill of indictment herein be quashed, annulled, and dismissed, for the following reasons, to wit:

1

That the act of Congress of June 30th, 1906, known as the "food and drug act" (34 Statutes at Large, 768), in so far as relied on by the Government herein, is unconstitutional, null, and void, in the following particulars:

That it is violative of articles one, two, and three of the Constitution of the United States, in that it attempts to grant legislative powers to the judiciary.

That it violates amendment five of the Constitution of the United States, in that it seeks to deprive of life, liberty, and property without due process of law.

That it violates amendment six of the Constitution of the United States, in that it is too indefinite, sets up no ascertainable standard of guilty, and defendant cannot be informed of the nature and cause of the accusation against it thereunder.

Wherefore, mover prays that the bill of information or bill of indictment herein, be quashed, annulled, avoided, set aside, and dismissed, and that the defendant be discharged.

PUGH, GRIMMET & BOATNER,
FRED SIMON,
Attorneys for Mover.

(File endorsement omitted.)

14 In United States District Court for the Western District of Louisiana, Shreveport Division

No. 5542, at law—Criminal docket

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

SHREVEPORT GRAIN & ELEVATOR COMPANY, DEFENDANT

Messrs. Philip H. Mecom, U. S. attorney, and J. Fair Hardin, asst. U. S. attorney, Shreveport, Louisiana, for plaintiff.

Messrs. Pugh, Grimmet & Boatner, Shreveport, Louisiana, for defendant.

Opinion of the court on rehearing

Filed September 18, 1930

DAWKINS, J.: This is a criminal information, charging the defendant with misbranding certain corn bran, in violation of the pure food & drugs act of June 30, 1906 (34 Stat. 768), in that each sack of said product was branded as containing "100 lbs. net," whereas in truth they contained a lesser quantity. By amendment it is charged that some of the sacks contained not more than 85 lbs. net, and that the average was about 96 lbs.

Defendant moved to quash the information on the ground that said act violates arts. 1, 2, and 3 of the Federal Constitution because it attempts "to grant legislative powers to the judiciary and to the executive departments of the Government"; and it violates the fifth amendment to the Constitution in that it "seeks to deprive of life, liberty, and property without due process of law," as well as
15 the fourteenth amendment, "for the same reason"; and further, that it violates the sixth amendment because "it is too indefinite, sets up no ascertainable standard of guilt, and defendant

can not be informed of the nature and cause of the accusation against it thereunder." After declaring that sacks or packages containing articles of food shall have the net weight or measure plainly stamped thereon, the third paragraph of Sec. VIII of the act provides as follows:

"Third. If in package form, the quantity and contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: Provided, however, That reasonable violations shall be permitted and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of sec. 3 of this act."

It must be remembered that this is a criminal action for the alleged violation of this statute, one of the very few that have been brought thereunder, and while the proceeding is against a corporation, it might easily have been one charging an individual, who in default of payment of fine could be subjected to imprisonment. Hence a much stricter construction is required than if it were merely an act affecting civil rights. I have no doubt that Congress has the power, for the protection of the public, to require that packages containing articles of food shall have stamped thereon the correct weight or number and that the dealer, without having any fraudulent or criminal purpose may, in an extensive business, be unable to comply exactly in each instance with this requirement. However, in such circumstances it would be a question of intent for the court and jury, if there was a variation, but the dealer would have a fixed standard by which to be guided, whereas,
16 under the quoted provision of the act, its violation, in large measure, is left either to the discretion of the enforcing department in making the rules or regulations, or to the judgment of the court and jury in each instance as to what is reasonable. This might vary according to the views of the particular tribunal, and the dealer could never know whether he was violating the law or not until he was brought into court.

For these reasons, I believe the asserted ground of unconstitutionality under the sixth amendment, is well founded. See U. S. vs. Cohen Grovery Co., 255 U. S. 81; Connally vs. General Construction Company, 269 U. S. 385; Yu Cong Eng vs. Trinidad, 271 U. S. 500; U. S. vs. Reese, et al., 92 U. S. 214; U. S. vs. Brewer, 139 U. S. 278; Todd vs. U. S., 154 U S. 282.

For the reasons assigned the demurrer or motions to dismiss will be sustained Proper decree may be presented.

Done and signed at Monroe, Louisiana, on this the 16th day of September, A. D. 1930.

BEN C. DAWKINS,
U. S. D. J.

(File endorsement omitted.)

17 In United States District Court for the Western District of Louisiana, Shreveport Division

No. 6214—Criminal docket

UNITED STATES OF AMERICA, PLAINTIFF

vs.

SHREVEPORT GRAIN & ELEVATOR COMPANY, DEFENDANT

Messrs. Philip H. Mecom, U. S. attorney, J. Fair Hardin, asst. U. S. atty., Shreveport, Louisiana, for plaintiff.

Mr. Fred Simon, Shreveport, Louisiana, and Messrs. Pugh, Grimmet & Boatner, Shreveport, Louisiana, for defendant.

Court's opinion

Filed Feb. 10, 1932

DAWKINS, J.: For the reasons given in memorandum opinion handed down in a similar prosecution by the Government against this defendant some months ago (U. S. vs. Shreveport Grain & Elevator Company, No. 5542), I think the demurrer and motion to quash should be sustained. Proper decree should be presented.

Done and signed in chambers at Monroe, Louisiana, on this 8th day of February, A. D. 1932.

BEN C. DAWKINS,
U. S. D. J.

(File endorsement omitted.)

18 In United States District Court for the Western District of Louisiana, Shreveport Division

No. 6214. F. & D. No. 23765

UNITED STATES OF AMERICA

vs.

SHREVEPORT GRAIN & ELEVATOR COMPANY, A CORPORATION

Order sustaining motion to quash and dismissing case

Filed Feb. 19, 1932

This cause having duly come on for hearing upon demurrer and motion to quash, and the same having been argued and submitted, and the court being of the opinion that the same are well founded in law, they have been sustained, and accordingly, it is hereby

Ordered, adjudged, and decreed that this proceeding be, and the same is hereby, dismissed with costs.

Judgment rendered on the 10th day of February, 1932.

Judgment read and signed in open court, at Shreveport, Louisiana, on this the 19th day of February, 1932.

BEN C. DAWKINS,
Judge, United States District Court, for the Western District of Louisiana.

(File endorsement omitted.)

19 In United States District Court

(Title omitted.)

Petition for appeal

Filed March 7, 1932

To the honorable BEN C. DAWKINS,
Judge of said court:

Now comes the United States of America in the above numbered and entitled cause, through Philip H. Mecom, United States attorney, and J. Fair Hardin, assistant United States attorney, and feeling themselves aggrieved by the opinion of this court, dated February 8, 1932, and filed and entered February 10, 1932, and by the final decree of this court rendered on February 10, 1932, and read and signed on February 19, 1932, in said cause in favor of the defendant, Shreveport Grain and Elevator Company, a corporation, sustaining the demurrer and motion to quash filed herein on the ground that paragraph 3 of section 8 of the pure food & drugs act of June 30, 1906, as amended under which the indictment herein is laid, is unconstitutional as violative of the sixth amendment to the Constitution of the United States, and ordering and decreeing the dismissal of this cause, petition this honorable court for an order of appeal direct to the Supreme Court of the United States, sitting at Washington, D. C., pursuant to section 682, title 18, United States Code, and file in connection herewith their bill of exception, assignment of errors.

Wherefore, petitioners pray that the order of appeal be granted, returnable according to law, and that the defendant, or its counsel, be duly cited and served with notice thereof, and pray for all orders and decrees necessary and for full, general relief.

PHILIP H. MECOM,
United States Attorney.
J. FAIR HARDIN,
Assistant United States Attorney.

20 In United States District Court

(Title omitted.)

Plaintiff's bill of exception and assignment of errors

Filed March 7, 1932

Comes now the plaintiff in the above numbered and styled cause and excepts to the opinion and decree of the court herein, and assigns the following errors, which it avers were committed by the court and upon which it relies on the prosecution of the appeal applied for herein:

1

The court erred in holding in the memorandum opinion filed herein, and in the memorandum opinion referred to and made part of this opinion in United States vs. Shreveport Grain & Elevator Company, No. 4442 (45 Fed. 2d 354), that paragraph 3rd of section 8 of the pure food and drugs act of June 30, 1906, as amended (37 Stat. 732, 21 U. S. C. A., sec. 10, paragraph 3rd), under which this indictment is laid and reading as follows:

"Third. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with the provisions of section 3 of this title."

in violative of the sixth amendment of the Constitution of the United States in the following language:

"For these reasons, I believe the asserted ground of unconstitutionality under the sixth amendment, is well founded."

2

That the court erred in sustaining the demurrer and motion to quash filed by the defendant herein, upon the ground of the unconstitutionality of said act as set out in said demurrer and motion.

21 Wherefore, plaintiff prays that this, its assignment of errors and bill of exception to the ruling and judgment of the court, be approved and allowed and that the judgment of the District Court be reversed herein.

PHILIP H. MECOM,
United States Attorney.
J. FAIR HARDIN,
Assistant United States Attorney.

Approved:
BEN C. DAWKINS,
District Judge.

(File endorsement omitted.)

22 In United States District Court

Order allowing appeal

Filed March 7, 1932

Considering the above and foregoing petition for appeal, together with assignment of errors, it is therefore ordered that petitioner, the United States of America, be and it is hereby granted an appeal to the Supreme Court of the United States sitting at Washington, D. C., returnable according to law.

It is further ordered that notice of this appeal be given and served upon the defendant or its counsel of record.

Thus done, ordered, and signed, at Opelousas, Louisiana, on this the 7 day of March, 1932.

BEN C. DAWKINS,
District Judge.

(File endorsement omitted.)

In United States District Court

Waiver of notice of appeal and citation

Filed March 9, 1932

Counsel for defendant and appellee take notice of the appeal granted herein, and of the order dated March 7, 1932, and acknowledge receipt of a copy of the petition, order, and assignment of errors attached thereto, and waive citation of appeal and the service of process for the defendant and appellee.

Witness our hands at Shreveport, La., this March 9, 1932.

YANDELL BOATNER,
JUDSON M. GRIMMET,
Counsel for Defendant, Appellee.

(File endorsement omitted.)

23 In United States District Court Western District of Louisiana

Minute entries

Shreveport, Louisiana, Thursday, November 5, 1931

(Title omitted.)

ORDER FOR SERVICE

Considering the annexed bill of information filed herein by the United States against the Shreveport Grain & Elevator Company, it is ordered that a certified copy of said bill of information be served

on the said Shreveport Grain & Elevator Company, and that the defendant, Shreveport Grain & Elevator Company, a corporation, be and it is hereby ordered to appear before this court, through its duly authorized officers, at Shreveport, La., at 10 o'clock a. m., on November 9th, 1931, and there plead and make answer to the bill of information heretofore filed against it, and herein fail not under penalty of the law.

Done and signed in open court at Shreveport, Louisiana, on this the 5th day of November, 1931.

BEN C. DAWKINS,
Judge.

Ordered that court adjourn.

Shreveport, Louisiana, Monday, November 9, 1931

(Title omitted.)

Demurrer, and motion to dismiss by defendant filed.

Mr. Harding representing the Government and Mr. Simon representing the defendant both in open court and consenting, and on their joint motion,

It was ordered that said demurrer and motion be fixed for hearing on Friday, November 20, 1931.

Ordered that court adjourn.

24 Shreveport, Louisiana, Tuesday, November 24, 1931

(Title omitted.)

Asst. U. S. attorney, J. Fair Hardin, present and representing the Government, and Fred Simon, Esquire, of counsel for the defendant, also present, and said counsel agreeing and consenting, and on their joint motion,

It was ordered that the demurrer and motion to dismiss filed on behalf of the defendant company herein be submitted on the briefs in the case of the United States versus Shreveport Grain and Elevator Company, No. 5542, and on additional briefs to be filed, if desired, within fifteen days; after which the case is then to be taken under advisement by the court.

Mr. Hardin, on behalf of the Government, presented and filed an additional brief.

Ordered that court adjourn.

Shreveport, Louisiana, Monday, February 15, 1932

(Title omitted.)

Asst. U. S. attorney, J. Fair Hardin, appearing in open court, excepted to the—ruling of the court sustaining the demurrer and

motion to quash filed by the defendant and reserved the right to file a formal bill of exception on behalf of the Government.

Ordered that court adjourn.

25 In United States District Court

Præcipe for transcript of record

Filed March 19, 1932

DEPARTMENT OF JUSTICE,
UNITED STATES ATTORNEY, WESTERN DISTRICT OF LOUISIANA,
Shreveport, Louisiana, March 10, 1932.

JFH–FM

Clerk,
United States District Court Building.

In re United States vs. Shreveport Grain and Elevator Co. No. 6214

DEAR SIR: Please include in the transcript on the above case on appeal to the Supreme Court the following documents:

1. Indictment.
2. Defendant's demurrer and motion to quash.
3. The opinion of the court in case of United States vs. Shreveport Grain & Elevator Co., No. 5542.
4. The opinion of the court in this case (No. 6214).

4½. Order sustaining motion to quash and dismiss case.

5. The petition and order for appeal and plaintiff's bill of exception and assignment of error, and waiver of notice and citation of appeal.
6. This præcipe.
7. Minutes of court.

Yours very truly,

(Signed) J. FAIR HARDIN,
Assistant United States Attorney.

(File endorsement omitted.)

26 (Clerk's certificate to foregoing transcript omitted in printing.)

27 In Supreme Court of the United States

On appeal from the District Court of the United States for the Western District of Louisiana

Statement of points relied upon and designation of entire record for printing

Filed March 22, 1932

Pursuant to rule 13 of this court, appellant specifies the following as the points upon which it intends to rely in the above-entitled cause:

1. The District Court erred in sustaining the demurrer to the indictment.

2. The District Court erred in sustaining the motion to quash the indictment.

3. The District Court erred in holding that the third paragraph of that portion of section 8 of the food and drugs act, as amended, relating to the misbranding of food (U. S. C. title 21, sec. 10), under which the indictment was laid, violates the sixth amendment of the Constitution of the United States.

28 The entire record as filed should be printed.

THOMAS D. THACHER,
Solicitor General.

Dated March 22, 1932.

(File endorsement omitted.)

[Indorsement on cover:] Enter Attorney General. File No. 36,621. W. Louisiana, D. C. U. S. Term No. 807. The United States of America, appellant, vs. Shreveport Grain & Elevator Company. Filed March 18, 1932. File No. 36,621.

U. S. GOVERNMENT PRINTING OFFICE